

Exhibit 2

PX7060

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UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the Matter of :

:

MICROSOFT CORPORATION, :

a corporation :

: Docket No. 9412

and :

:

ACTIVISION BLIZZARD, INC., :

a corporation :

- - - - - X

**** HIGHLY CONFIDENTIAL ****

Remote Videotaped Deposition of PHILLIP EISLER

Wednesday, April 12, 2023

8:35 a.m. (PDT)

Job No. 6355411

Pages: 1 - 206

Reported by: Dana C. Ryan, RPR, CRR

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 April 12, 2023</p> <p>6 8:35 a.m. (PDT)</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Remote Videotaped Deposition of PHILLIP</p> <p>11 EISLER, held via Zoom video teleconference, before</p> <p>12 Dana C. Ryan, Registered Professional Reporter,</p> <p>13 Certified Realtime Reporter, State of Georgia</p> <p>14 Certified Court Reporter, State of Washington</p> <p>15 Certified Court Reporter and Notary Public in and</p> <p>16 for the State of Alabama and the District of</p> <p>17 Columbia.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S C O N T I N U E D</p> <p>2</p> <p>3 ON BEHALF OF MICROSOFT CORPORATION:</p> <p>4 KERI ARNOLD, ESQ.</p> <p>5 EMILY CLARKE, ESQ.</p> <p>6 Wilkinson Stekloff LLP</p> <p>7 2001 M Street, Northwest</p> <p>8 10th Floor</p> <p>9 Washington, D.C. 20036</p> <p>10 Telephone: (202) 847-4000</p> <p>11 Email: karnold@wilkinsonstekloff.com</p> <p>12 Email: eclarke@wilkinsonstekloff.com</p> <p>13</p> <p>14</p> <p>15 ON BEHALF OF ACTIVISION:</p> <p>16 BRADLEY J. PIERSON, ESQ.</p> <p>17 Skadden Arps Slate Meagher & Flom, LLP</p> <p>18 One Manhattan West</p> <p>19 New York, New York 20001</p> <p>20 Telephone: (212) 735-3000</p> <p>21 Email: bradley.pierson@skadden.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:</p> <p>4 NICOLE CALLAN, ESQ.</p> <p>5 J. ALEXANDER ANSALDO, ESQ.</p> <p>6 JAMES H. WEINGARTEN, ESQ.</p> <p>7 STEPHEN SANTULLI, ESQ.</p> <p>8 U.S. Federal Trade Commission</p> <p>9 Bureau Of Competition</p> <p>10 Office Of Policy And Coordination</p> <p>11 600 Pennsylvania Avenue, Northwest</p> <p>12 Washington, D.C. 20580</p> <p>13 Telephone: (202) 326-3274</p> <p>14 Email: ncallan@ftc.gov</p> <p>15 Email: jansaldo@ftc.gov</p> <p>16 Email: jweingarten@ftc.gov</p> <p>17 Email: ssantulli@ftc.gov</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 A P P E A R A N C E S C O N T I N U E D</p> <p>2</p> <p>3 ON BEHALF OF NVIDIA:</p> <p>4 MIKE BONANNO, ESQ.</p> <p>5 Quinn Emanuel Urquhart & Sullivan, LLP</p> <p>6 1300 I Street, Northwest</p> <p>7 Suite 900</p> <p>8 Washington, D.C. 20005</p> <p>9 Telephone: (202) 538-8000</p> <p>10 Email: mikebonanno@quinnemanuel.com</p> <p>11</p> <p>12</p> <p>13 Also present:</p> <p>14 Azadeh Morrison</p> <p>15 Aline Zam-Vieira O'Clair</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 C O N T E N T S</p> <p>2</p> <p>3 EXAMINATION OF PHILLIP EISLER: PAGE:</p> <p>4 By Ms. Callan 11</p> <p>5 By Ms. Arnold 147</p> <p>6 By Ms. Callan 192</p> <p>7</p> <p>8</p> <p>9</p> <p>10 E X H I B I T S</p> <p>11 (Attached to the Transcript)</p> <p>12 PX PAGE:</p> <p>13 Exhibit 1781 Nvidia GeForce Now Listing 112</p> <p>14 Agreement; PX1781-001</p> <p>15 Through 016</p> <p>16 Exhibit 1784 Windows Addendum; 132</p> <p>17 PX1784-001 Through 003</p> <p>18 Exhibit 2391 January 2020 Email Chain 89</p> <p>19 With Attachment; PX2391-001</p> <p>20 Through 016</p> <p>21 Exhibit 3052 Slide Deck Titled Nvidia 64</p> <p>22 GFN Key Metrics, April -</p> <p>23 2022; PX3052-001 Through</p> <p>24 041</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 E X H I B I T S C O N T I N U E D</p> <p>2 (Attached to the Transcript)</p> <p>3 PX PAGE:</p> <p>4 Exhibit 8000 Declaration Of Phil Eisler; 15</p> <p>5 PX8000-001 Through 015</p> <p>6</p> <p>7</p> <p>8 RX PAGE:</p> <p>9 Exhibit 0278 Slide Deck Titled Nvidia 168</p> <p>10 GeForce NOW KPIS, October</p> <p>11 2018; RX0278-001 Through</p> <p>12 013</p> <p>13 Exhibit 0279 Slide Deck Titled Nvidia 170</p> <p>14 GeForce NOW November KPIS,</p> <p>15 December 1, 2018; RX0279-001</p> <p>16 Through 012</p> <p>17 Exhibit 0281 Slide Deck Titled Nvidia 172</p> <p>18 GFN July November KPIS,</p> <p>19 August 23, 2019; RX0281-001</p> <p>20 Through 013</p> <p>21 Exhibit 0298 February 2023 Email Chain; 161</p> <p>22 RX0298-001 Through 003</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 7</p> <p>1 E X H I B I T S C O N T I N U E D</p> <p>2 (Attached to the Transcript)</p> <p>3 PX PAGE:</p> <p>4 Exhibit 3103 January 9, 2023 Notes Of 19</p> <p>5 A Call With Nvidia Held</p> <p>6 Via Microsoft Teams;</p> <p>7 PX3103-001 Through 039</p> <p>8 Exhibit 3104 January 12, 2023 Email 19</p> <p>9 Chain With Attachment;</p> <p>10 PX3104-001 Through 044</p> <p>11 Exhibit 3141 Article Titled Nvidia 38</p> <p>12 Brings RTX 4080 To GeForce</p> <p>13 NOW; PX3141-001 Through 002</p> <p>14 Exhibit 3144 Slide Deck Titled Nvidia 57</p> <p>15 GFN Business Review -</p> <p>16 November 2022; PX3144-001</p> <p>17 Through 016</p> <p>18 Exhibit 3149 January And February 2023 109</p> <p>19 Email Chain; PX3149-001</p> <p>20 Through 009</p> <p>21 Exhibit 3153 March 2019 Email Chain; 141</p> <p>22 PX3153-001 Through 010</p> <p>23 Exhibit 3157 February 2023 Email Chain 144</p> <p>24 With Attachment; PX3157-001</p> <p>25 Through 015</p>	<p style="text-align: right;">Page 9</p> <p>1 E X H I B I T S C O N T I N U E D</p> <p>2 (Attached to the Transcript)</p> <p>3 RX PAGE:</p> <p>4 Exhibit 0302 February 28, 2023 Notes Of 159</p> <p>5 A Call With Nvidia Held</p> <p>6 Via Microsoft Teams;</p> <p>7 RX0302-001 Through 0033</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 PROCEEDINGS

2 THE COURT REPORTER: The attorneys

3 participating in this deposition acknowledge that

4 I am not physically present in the deposition room

5 and that I will be reporting this deposition

6 remotely.

7 They further acknowledge that, in lieu

8 of an oath administered in person, the witness

9 will be sworn remotely and declare his testimony

10 in this matter is under penalty of perjury.

11 The parties and their counsel consent

12 to the arrangement and all objections are waived

13 to this manner of reporting unless so indicated at

14 this time.

15 (Brief pause.)

16 THE COURT REPORTER: Hearing no

17 objections, I will now swear the witness.

18 Will you please raise your right hand,

19 sir?

20 *****

21 PHILLIP EISLER,

22 having been duly sworn, testified as follows:

23 *****

24 MR. BONANNO: Before we get started, as

25 everyone at this deposition knows, Nvidia is a

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1 third party. We have concerns about

2 confidentiality. I don't know exactly how that

3 works under the protective order for the prior

4 three proceedings.

5 I'm assuming I can just designate the

6 entire transcript as confidential, and we can deal

7 with the specifics as we get closer to trial if

8 there's something that either party or the ALJ

9 believes needs to be in the public record.

10 So I'm going to designate the entire

11 transcript right now as confidential unless you

12 tell me there's something else I need to do to

13 preserve confidentiality.

14 MS. CALLAN: That sounds perfectly

15 fine.

16 MR. BONANNO: Okay. Thank you.

17 EXAMINATION BY COUNSEL

18 FOR THE FEDERAL TRADE COMMISSION

19 BY MS. CALLAN:

20 Q Good morning, Mr. Eisler. My name is

21 Nicole Callan, and I'm an attorney with the

22 Federal Trade Commission. I'm joined by my

23 colleagues Alex Ansaldi, James Weingarten and

24 Stephen Santulli.

25 Would you please state your name for

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1 the record?

2 A My name is Phillip Eisler.

3 Q I'm going to be asking you questions

4 today about Microsoft's proposed acquisition of

5 Activision Blizzard.

6 If I used the term "proposed

7 acquisition" or "proposed transaction" today, will

8 you understand that to mean that I'm referring to

9 Microsoft's proposed acquisition of Activision?

10 A Yes, I do.

11 Q And this hearing will be conducted

12 remotely under the FTC rules. Since we are doing

13 this hearing remotely, can you please tell me

14 where you are located?

15 [REDACTED]

16 Q And is anyone else present in the room

17 with you today?

18 A No, other than my -- oh, my dog is not

19 here, but okay. He comes in and out.

20 Q That's perfectly fine.

21 Have you ever been deposed before?

22 A I have once before.

23 Q Okay. So just to go over some of the

24 ground rules as a reminder, the court reporter is

25 transcribing everything we say. The court

Page 13

1 reporter cannot record gestures or nods, so please

2 respond to all questions verbally.

3 If you don't understand a question,

4 please just let me know, and I will repeat it or

5 rephrase it. If you do answer a question, I will

6 assume that you understood it. And if you don't

7 know the answer to a question, please just say so.

8 Do you understand those instructions?

9 A I do.

10 Q In response to some of my questions, an

11 attorney might object. Those objections are for

12 the record. So unless the question calls for

13 privileged information or your counsel

14 specifically instructs you not to answer, you

15 should go ahead and answer the question after the

16 objection.

17 Do you understand you've taken an oath

18 to tell the truth today?

19 A I do.

20 Q And is there anything that may affect

21 your ability to give truthful and complete

22 testimony today?

23 A No.

24 Q What is your current title?

25 A I'm vice president and general manager

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<p style="text-align: right;">Page 14</p> <p>1 of GeForce NOW cloud gaming at Nvidia.</p> <p>2 Q And how long have you worked at Nvidia?</p> <p>3 A Since 2009.</p> <p>4 Q And how long have you led the GeForce</p> <p>5 NOW business?</p> <p>6 A Since 2011.</p> <p>7 Q Who do you currently report to?</p> <p>8 A Jeff Fisher.</p> <p>9 Q Who is Jeff Fisher?</p> <p>10 A He's the senior vice president of the</p> <p>11 GeForce gaming business unit.</p> <p>12 MR. BONANNO: Ms. Callan, before you</p> <p>13 ask another question, it could just be me, but I'm</p> <p>14 having trouble with your audio.</p> <p>15 Mr. Eisler, can you hear the</p> <p>16 questioning clearly? And, Madame Court Reporter,</p> <p>17 are you able to hear Ms. Callan's questions</p> <p>18 clearly?</p> <p>19 THE COURT REPORTER: She garbles</p> <p>20 sometimes. She comes in and out sometimes for me.</p> <p>21 THE WITNESS: I actually have trouble</p> <p>22 hearing the court reporter, Dana. She's a little</p> <p>23 soft. But I can hear Nicole.</p> <p>24 MR. BONANNO: Okay. Well, I don't want</p> <p>25 to slow things down. Mr. Eisler, if at any point</p>	<p style="text-align: right;">Page 16</p> <p>1 Q And I think you said you have access to</p> <p>2 the Box platform. You might need to refresh once</p> <p>3 the document is loaded.</p> <p>4 A Okay. I'm refreshing.</p> <p>5 Q And you'll see something called a PX</p> <p>6 number in the bottom right corner of every</p> <p>7 document I show you today, and I'll use those</p> <p>8 numbers to direct you to the page that I'm</p> <p>9 referring to.</p> <p>10 A It still says there's no items in this</p> <p>11 folder. Maybe it takes a while?</p> <p>12 Q Yeah, we're in the process of loading</p> <p>13 it, so it will just take a moment.</p> <p>14 Okay. It should be there now.</p> <p>15 A Okay. I see a document. I should open</p> <p>16 this.</p> <p>17 Q Yes.</p> <p>18 A Okay. I have it open.</p> <p>19 Q And is PX8000 the declaration you</p> <p>20 signed related to the proposed transaction?</p> <p>21 MR. BONANNO: Mr. Eisler, please feel</p> <p>22 free to scroll through the document to make sure</p> <p>23 you've reviewed the entire document and are</p> <p>24 comfortable with its contents before answering any</p> <p>25 questions.</p>
<p style="text-align: right;">Page 15</p> <p>1 you can't hear Ms. Callan's questions, please just</p> <p>2 let her know so that you can make sure you can</p> <p>3 clearly understand the question before you answer.</p> <p>4 THE WITNESS: Okay. I will do.</p> <p>5 BY MS. CALLAN:</p> <p>6 Q Mr. Eisler, how long have you reported</p> <p>7 to Jeff Fisher?</p> <p>8 A Since I joined Nvidia in 2009.</p> <p>9 Q And what are your current</p> <p>10 responsibilities?</p> <p>11 A I'm responsible for all cloud gaming at</p> <p>12 Nvidia, so running the GeForce NOW service in</p> <p>13 terms of the business aspect of running that</p> <p>14 business.</p> <p>15 Q And you signed a declaration in</p> <p>16 response to a subpoena from the FTC related to</p> <p>17 Microsoft's proposed acquisition of Activision; is</p> <p>18 that correct?</p> <p>19 A That's correct.</p> <p>20 Q So I'd like to show you a document.</p> <p>21 It's been premarked as PX8000.</p> <p>22 (PX Deposition Exhibit 8000 was</p> <p>23 identified for the record and attached to the</p> <p>24 transcript.)</p> <p>25 BY MS. CALLAN:</p>	<p style="text-align: right;">Page 17</p> <p>1 THE WITNESS: (Reviews document.)</p> <p>2 Yes, that is the document that I</p> <p>3 signed.</p> <p>4 BY MS. CALLAN:</p> <p>5 Q If you turn to the page ending in 015,</p> <p>6 is that your signature on the left?</p> <p>7 A That's my signature on the right, yes.</p> <p>8 Q And you signed this on December 2nd,</p> <p>9 2022; correct?</p> <p>10 A That's correct, yes.</p> <p>11 Q Did you review this declaration before</p> <p>12 you signed it?</p> <p>13 A Yes, I did.</p> <p>14 Q And was everything in this declaration</p> <p>15 accurate at the time?</p> <p>16 A Yes, it was.</p> <p>17 Q You can set that aside.</p> <p>18 Have you participated in any calls with</p> <p>19 the UK CMA related to the proposed transaction?</p> <p>20 A Yes, I have.</p> <p>21 Q And when were those calls?</p> <p>22 A Actually, you'd have to remind me of</p> <p>23 the dates.</p> <p>24 MR. BONANNO: Mr. Eisler, just testify</p> <p>25 to the best of your personal recollection. If you</p>

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<p style="text-align: right;">Page 18</p> <p>1 don't recall the specific dates or details --</p> <p>2 THE WITNESS: I don't recall the</p> <p>3 specific dates, but I think it was the</p> <p>4 January/February time frame, I believe.</p> <p>5 BY MS. CALLAN:</p> <p>6 Q How many calls did you participate in?</p> <p>7 A To be honest, my mind is a little foggy</p> <p>8 between the UK ones and the Brussels ones.</p> <p>9 You know, I think between the two of</p> <p>10 them, there's been at least one call with each,</p> <p>11 and there's been some documents sent back and</p> <p>12 forth. But that's my best recollection.</p> <p>13 Q Was your meeting with the European</p> <p>14 commission in person?</p> <p>15 A I participated via video conference.</p> <p>16 Q And have you seen a transcript of any</p> <p>17 of the calls that you participated in with the</p> <p>18 CMA?</p> <p>19 MR. BONANNO: Objection to form.</p> <p>20 THE WITNESS: I have received</p> <p>21 transcripts from some of the calls, yes.</p> <p>22 BY MS. CALLAN:</p> <p>23 Q Have you seen a transcript of a call</p> <p>24 from any of the meetings with the CMA</p> <p>25 specifically?</p>	<p style="text-align: right;">Page 20</p> <p>1 BY MS. CALLAN:</p> <p>2 Q PX3103 appears to be the transcript of</p> <p>3 a call with Nvidia and -- and to the UK CMA called</p> <p>4 via Microsoft Teams on January 9th, 2023.</p> <p>5 And if you refresh, you'll see the</p> <p>6 documents.</p> <p>7 A Yeah, I see it. I see it now.</p> <p>8 Q Okay.</p> <p>9 A (Witness reviews document.)</p> <p>10 Okay. I scanned the 103 document. Did</p> <p>11 you say you were sending me two documents or one?</p> <p>12 Q We uploaded two. We can start with</p> <p>13 PX3103.</p> <p>14 A Okay. I've scanned that one.</p> <p>15 Q Have you seen that document before?</p> <p>16 A Yes, I have.</p> <p>17 Q And did you have an opportunity to</p> <p>18 review this transcript?</p> <p>19 A Yes, I did.</p> <p>20 Q And is this an accurate transcript?</p> <p>21 MR. BONANNO: Objection to form.</p> <p>22 THE WITNESS: To the best of my</p> <p>23 knowledge, it's accurate, yes.</p> <p>24 BY MS. CALLAN:</p> <p>25 Q And who from Nvidia spoke at this</p>
<p style="text-align: right;">Page 19</p> <p>1 A I read a lot of documents about this.</p> <p>2 I believe that I have seen one of those, yes.</p> <p>3 Q Did you have an opportunity to correct</p> <p>4 the transcript of that call?</p> <p>5 MR. BONANNO: Objection to form. No</p> <p>6 foundation.</p> <p>7 BY MS. CALLAN:</p> <p>8 Q You can answer.</p> <p>9 A Yeah, generally I -- I work with our</p> <p>10 legal team to review those documents, and I</p> <p>11 believe I did so.</p> <p>12 Q And in the calls that you had with the</p> <p>13 CMA, was the information that you provided</p> <p>14 accurate at the time?</p> <p>15 MR. BONANNO: Objection to form.</p> <p>16 THE WITNESS: To the best of my</p> <p>17 knowledge, it was accurate.</p> <p>18 BY MS. CALLAN:</p> <p>19 Q I'd like to show you two documents.</p> <p>20 These have been premarked PX3103 and PX3104.</p> <p>21 (PX Deposition Exhibit 3103 and PX</p> <p>22 Deposition Exhibit 3104 were identified for the</p> <p>23 record and attached to the transcript.)</p> <p>24 MS. CALLAN: And these are being loaded</p> <p>25 into Box now.</p>	<p style="text-align: right;">Page 21</p> <p>1 meeting?</p> <p>2 A There was myself; my boss, Jeff Fisher;</p> <p>3 and also our chief counsel, Tim Teter.</p> <p>4 Q And did you agree with Mr. Teter's</p> <p>5 statements at the meeting?</p> <p>6 MR. BONANNO: Objection to form.</p> <p>7 Are there specific statements that you</p> <p>8 would like to ask Mr. Eisler about that were made</p> <p>9 during the meeting and reflected in the</p> <p>10 transcript?</p> <p>11 BY MS. CALLAN:</p> <p>12 Q Mr. Eisler, you can answer.</p> <p>13 MR. BONANNO: Mr. Eisler, please take</p> <p>14 your time and review all of Mr. Teter's statements</p> <p>15 that are reflected in the exhibit that's in front</p> <p>16 of you before you answer the question.</p> <p>17 THE WITNESS: (Reviews document.)</p> <p>18 Yeah, from my initial read, I mean, his</p> <p>19 statements look accurate to me.</p> <p>20 BY MS. CALLAN:</p> <p>21 Q And did you agree with Mr. Fisher's</p> <p>22 statements at the meeting?</p> <p>23 A Is there a specific statement you have</p> <p>24 in mind, or --</p> <p>25 Q No.</p>

April 12, 2023

<p style="text-align: right;">Page 22</p> <p>1 But do you recall disagreeing with any</p> <p>2 statements at this meeting?</p> <p>3 MR. BONANNO: Mr. Eisler, please go</p> <p>4 ahead and review the document that's in front of</p> <p>5 you, the transcript, before you answer the</p> <p>6 question to the extent counsel is asking you about</p> <p>7 all statements that were made by Mr. Fisher as</p> <p>8 reflected in PX3103.</p> <p>9 THE WITNESS: I do not recall</p> <p>10 disagreeing with any of Tim's statements.</p> <p>11 BY MS. CALLAN:</p> <p>12 Q And if Mr. Teter or Mr. Fisher made a</p> <p>13 statement that you disagreed with, you would have</p> <p>14 voiced that; right?</p> <p>15 MR. BONANNO: Objection to form.</p> <p>16 THE WITNESS: I would have -- I would</p> <p>17 have commented during the review of the -- of</p> <p>18 the -- of the document.</p> <p>19 BY MS. CALLAN:</p> <p>20 Q If you turn to PX3104, this appears to</p> <p>21 be a January 12th, 2023 email from Trevor Soames</p> <p>22 attaching an Nvidia slide deck.</p> <p>23 A (Witness reviews document.)</p> <p>24 Okay. I've reviewed the document.</p> <p>25 Q And do you recognize the presentation</p>	<p style="text-align: right;">Page 24</p> <p>1 department and the lawyers representing us.</p> <p>2 Q And did you review that final</p> <p>3 presentation before it was sent to the CMA?</p> <p>4 A Yes, I did.</p> <p>5 Q And was the information in the</p> <p>6 presentation truthful and accurate at the time?</p> <p>7 A Yes, to the best of my knowledge.</p> <p>8 Q And Microsoft and Nvidia have now</p> <p>9 signed a GeForce NOW licensing agreement; is that</p> <p>10 correct?</p> <p>11 A Yes, that's correct.</p> <p>12 Q Did you meet with the UK CMA after you</p> <p>13 signed that agreement?</p> <p>14 A Oh, we talked to them before and after,</p> <p>15 yes.</p> <p>16 Q And was the meeting after you signed</p> <p>17 the agreement in February?</p> <p>18 A My recollection is that's about the</p> <p>19 right timing, yes.</p> <p>20 Q If I call it the second CMA meeting,</p> <p>21 will you understand that I'm referring to the</p> <p>22 meeting that occurred after you signed the</p> <p>23 agreement with Microsoft?</p> <p>24 MR. BONANNO: Object -- objection to</p> <p>25 form.</p>
<p style="text-align: right;">Page 23</p> <p>1 that's attached to this email?</p> <p>2 A Yes, I do.</p> <p>3 Q What is it?</p> <p>4 A It was a presentation that we prepared</p> <p>5 for the regulators regarding a transaction.</p> <p>6 Q And did you present this slide deck?</p> <p>7 A I don't believe that I did. I think --</p> <p>8 I don't -- I don't recall me personally presenting</p> <p>9 it.</p> <p>10 Q Do you recall someone --</p> <p>11 A I think someone from our company did,</p> <p>12 but I don't think it was me personally.</p> <p>13 Q And who was it presented to?</p> <p>14 MR. BONANNO: Objection to form.</p> <p>15 THE WITNESS: I know the document was</p> <p>16 sent, you know, as the email states, to the CMA,</p> <p>17 and I remember a discussion about it. I don't</p> <p>18 know if it was -- I can't recall if it was</p> <p>19 physically presented or not.</p> <p>20 I think we just talked to it in</p> <p>21 general, but it wasn't, like, formally presented.</p> <p>22 BY MS. CALLAN:</p> <p>23 Q Do you know who wrote the presentation?</p> <p>24 A It was a collaboration of different</p> <p>25 people from myself, our business unit, our DevRel</p>	<p style="text-align: right;">Page 25</p> <p>1 Ms. Callan, I might suggest for</p> <p>2 clarity, given the witness' prior testimony that</p> <p>3 he does not recall the number of meetings he may</p> <p>4 have had with various regulators, that you come up</p> <p>5 with a different shorthand way to refer to the</p> <p>6 meeting that you have in mind.</p> <p>7 BY MS. CALLAN:</p> <p>8 Q Mr. Eisler, is there a shorthand way</p> <p>9 that you would refer to the meeting?</p> <p>10 A Well, maybe you could call it</p> <p>11 post-Microsoft agreement meeting. That would be</p> <p>12 maybe clearer.</p> <p>13 Q Sure.</p> <p>14 Have you seen a transcript of the</p> <p>15 post-Microsoft agreement meeting that you had with</p> <p>16 the CMA?</p> <p>17 A I believe that I have, yes.</p> <p>18 Q And did you have an opportunity to</p> <p>19 correct the transcript of that meeting?</p> <p>20 A In general, I reviewed them all, so I</p> <p>21 believe that I did as well, yes.</p> <p>22 Q And was the information provided to the</p> <p>23 CMA during the post-Microsoft agreement meeting</p> <p>24 accurate at the time?</p> <p>25 A Yes, it would be accurate.</p>

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1 Q Did you have talking points for the
2 post-Microsoft agreement meeting that you had with
3 the CMA?
4 MR. BONANNO: Objection to form.
5 Privileged.
6 Mr. Eisler, don't answer that question
7 to the extent it would require you to reveal
8 communications you've had with counsel, either
9 internal to the company or outside counsel.
10 THE WITNESS: I don't recall us having
11 written down talking points.
12 BY MS. CALLAN:
13 Q Did Microsoft have any input on what
14 you should say during the post-Microsoft agreement
15 meeting you had with CMA?
16 MR. BONANNO: Objection.
17 Mr. Eisler, don't respond to this
18 question if it would require you to reveal
19 communications with counsel.
20 THE WITNESS: We only had meetings with
21 counsel present.
22 BY MS. CALLAN:
23 Q And was your testimony shared with
24 anyone from Microsoft after the post-Microsoft
25 agreement meeting you had with the CMA?

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1 MR. BONANNO: Again, Mr. Eisler, only
2 answer the question if you are aware of
3 communications that would not involve attorneys
4 for Nvidia or outside counsel for Nvidia.
5 THE WITNESS: I'm not aware of it being
6 shared with Microsoft.
7 BY MS. CALLAN:
8 Q And you attended a hearing before the
9 European commission virtually in February of 2023;
10 is that correct?
11 A I believe that's accurate, yes.
12 Q And did you provide testimony to the
13 European commission?
14 MR. BONANNO: Objection to form.
15 THE WITNESS: We -- we answered their
16 questions, yes.
17 BY MS. CALLAN:
18 Q And were your answers to their
19 questions truthful and accurate at the time?
20 A Yes, to the best of our -- my -- my
21 knowledge.
22 Q And in addition to answering questions,
23 did you provide any affirmative statement?
24 MR. BONANNO: Objection to form.
25 THE WITNESS: I'm not sure what you --

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1 what you're asking by that question.
2 BY MS. CALLAN:
3 Q Did you make any statements that were
4 not in response to questions from the European
5 commission?
6 A This was -- in this meeting -- this was
7 a meeting after the license agreement or before?
8 I'm trying to remember which meeting
9 you're talking about.
10 Q My understanding is that there was a
11 meeting on the day that the GeForce NOW listing
12 agreement was announced publicly with the European
13 commission; is that correct?
14 A Yeah. Okay.
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 MS. CALLAN: We can go off the record
20 just briefly. The videographer is here, so we can
21 switch over to having the videographer put us on
22 the record.
23 THE VIDEOGRAPHER: We are going off the
24 record at 1603 UTC time.
25 (Recess -- 9:03 a.m.)

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1 (After recess -- 9:09 a.m.)
2 (Begin Video Recorded Deposition.)
3 THE VIDEOGRAPHER: Good morning. We
4 are now going from this point forward on the video
5 record at 1609 UTC time on April 12th, 2023.
6 Audio and video recording will continue
7 to take place until all parties agree to go off
8 the record. Please note that microphones are
9 sensitive and pick up whispering and private
10 conversations.
11 Counsel may proceed.
12 BY MS. CALLAN:
13 Q Mr. Eisler, GeForce NOW is Nvidia's
14 cloud gaming service; correct?
15 A That's correct.
16 Q And GeForce NOW offers an alternative
17 to downloading and playing PC games locally; is
18 that correct?
19 A That's correct.
20 Q Has Nvidia ever compared the quality of
21 cloud gaming on GeForce NOW to the quality of
22 downloading and playing games locally?
23 A We do compare that, yes.
24 Q And what have you found?
25 A We've found over time that we get

Page 30

1 closer and closer to the quality of playing
 2 locally.
 3 Q And how does the quality of cloud
 4 gaming on GeForce NOW compare to the quality of
 5 playing locally today?
 6 MR. BONANNO: Objection to form.
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 BY MS. CALLAN:
 13 Q And what do you mean by "increased
 14 latency"?
 15 A The time it takes from clicking on your
 16 mouse and the reaction in the game itself.
 17 Q And when you compared the latency on
 18 GeForce NOW to latency playing locally, were you
 19 comparing on particular devices?
 20 A Yes, we compare on many devices that we
 21 support.
 22 Q And does the differences in latency
 23 differ depending on the device you're comparing it
 24 to?
 25 A It can make a difference, yes.

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1 Q And how does it make a difference?
 2 A There's -- the device itself has to
 3 capture the mouse and keyboard inputs, and then it
 4 also has to decode the video coming in, and so
 5 certain devices are faster or slower at doing
 6 that.
 7 Q Which devices are slower than GeForce
 8 NOW?
 9 MR. BONANNO: Objection to form.
 10 I -- I don't totally understand the
 11 question. I don't understand the
 12 device-to-GeForce NOW comparison, but maybe
 13 Ms. Callan misspoke.
 14 THE WITNESS: Yes, the question is a
 15 little strange, and maybe we're not quite
 16 understanding each other.
 17 But GeForce NOW works with a number of
 18 different device types, so you can GeForce NOW to
 19 a PC, to a MAC, to a TV, to a phone. And, so,
 20 what I was explaining earlier was the difference
 21 in decoding time of each of those devices amongst
 22 GeForce NOW.
 23 Your question seems to be going in a
 24 different angle that I don't quite follow.
 25 BY MS. CALLAN:

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1 Q How does GeForce NOW compare to playing
 2 locally on a MAC?
 3 A It's a --
 4 MR. BONANNO: Objection to form.
 5 THE WITNESS: Yeah, it's not quite as
 6 good, but it's -- but it's close.
 7 BY MS. CALLAN:
 8 Q And you cannot play locally on a TV;
 9 correct?
 10 A You can stream GeForce NOW to a TV. We
 11 do support Samsung and LG TVs.
 12 Q My question was: You cannot play
 13 locally on a TV; correct?
 14 MR. BONANNO: Objection to form.
 15 THE WITNESS: You cannot install it
 16 directly on a TV. You'd have to connect the
 17 console to play on a TV.
 18 BY MS. CALLAN:
 19 Q So when you're comparing streaming from
 20 GeForce NOW to playing locally, what devices are
 21 you comparing?
 22 A Normally we compare it to playing on a
 23 PC because we stream PC games.
 24 Q Okay. Have you compared to consoles?
 25 A We do that to a lesser extent, but we

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1 do occasionally compare to consoles as well.
 2 Q And how does GeForce NOW compare to
 3 consoles?
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 Q What are the benefits?
 9 A Our cloud gaming servers are more
 10 powerful than consoles, so we're able to run
 11 higher resolutions, higher frame rates and add
 12 more visual effects.
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 34

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 Q Are you familiar with something called
 10 CES?
 11 A You're referring to the trade show,
 12 yes.
 13 Q And what is CES?
 14 A It's the Consumer Electronics Show in
 15 Las Vegas in January each year.
 16 Q Does GeForce NOW participate in CES?
 17 MR. BONANNO: Objection to form.
 18 THE WITNESS: I mean, Nvidia as a
 19 company used to participate directly with the show
 20 and have a booth presence there.
 21 Since COVID times, we have not, I
 22 think, been an official one, but we generally have
 23 a press suite where we meet with press and
 24 partners.
 25 BY MS. CALLAN:

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1 Q And did Nvidia do something called a
 2 Pepsi challenge at CES?
 3 A In our press suite, we did compare
 4 local gaming to that GeForce NOW gaming, yes.
 5 Q And how did you do that?
 6 A Sorry. I couldn't hear that question.
 7 Q How did you do that?
 8 A We compared GeForce NOW cloud gaming to
 9 a -- kind of a -- what we call a min spec PC. So,
 10 you know, one of the issues when you do these
 11 comparisons is that a local PC is not a consistent
 12 device. There's older, cheaper PCs with
 13 integrated graphics, and then there's more
 14 expensive gaming PCs with high performance. So we
 15 tend to compare to the low end of the local
 16 experience.
 17 Q And you did that comparison for press;
 18 is that correct?
 19 A Yes, that's correct.
 20 Q And what was the purpose of doing that
 21 comparison?
 22 A Yes. Since we've been working on cloud
 23 gaming for ten years, we're trying to convince
 24 press and gamers that it is as good as playing
 25 locally, at least on moderate- to lower-end PCs.

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1 And, so, our -- our idea was to prove
 2 that with our latest technology, and one of the
 3 things we had implemented was the 240 hertz
 4 streaming mode with Reflex that reduced the
 5 latency and made it very close to local.
 6 Q So your goal was to convince press and
 7 gamers that playing on GeForce NOW was as good as
 8 playing locally; is that correct?
 9 MR. BONANNO: Objection to form.
 10 THE WITNESS: Yeah, at least on a --
 11 you know, a moderate- to low-end PC, yes.
 12 BY MS. CALLAN:
 13 Q And did you prove that?
 14 A Yes, I think generally most of the
 15 press agreed that they couldn't -- they couldn't
 16 tell the difference on a particular game and setup
 17 that we had arranged for them.
 18 Q And about how many members of the press
 19 did you make this comparison available to?
 20 A I wasn't personally there. My product
 21 managers and PR people did. But I believe that
 22 they normally visit with maybe 20 to 40ish press
 23 over the span of a couple of days.
 24 Q And was the comparison that you did for
 25 the press at the January 2023 CES?

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1 MR. BONANNO: Objection to form. I
 2 assume by "you," you mean Nvidia, not Mr. Eisler,
 3 who just testified he personally did not perform
 4 the demonstration.
 5 THE WITNESS: Yeah, our -- our PR team
 6 did the -- the demonstrations in the meetings at
 7 CES 2023, but we generally meet with the press
 8 every year, so it's -- except for COVID, we've
 9 generally met with them each year.
 10 BY MS. CALLAN:
 11 Q And have you done these presentations
 12 in prior years?
 13 A We don't always do a Pepsi challenge,
 14 but we generally have demonstrations that we show
 15 to the press during these CES meetings, yes.
 16 Q Had you done a Pepsi challenge prior to
 17 2023?
 18 MR. BONANNO: Objection to form.
 19 THE WITNESS: I recall that we did
 20 something similar a few years earlier. It wasn't
 21 exactly as good, but we have compared to local
 22 play before, yes.
 23 BY MS. CALLAN:
 24 Q And in January of 2023, you introduced
 25 a new ultimate membership for GeForce NOW; is that

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1 correct?

2 A That's correct, yes.

3 Q And what is included in the ultimate
4 membership?

5 A It uses our latest high-performance GPU
6 called the Ada generation, which we also call the
7 RTX 4080. And, so, that provides greater
8 performance and enables 4K resolution and
9 streaming up to 240 frames per second.

10 Q And what is -- what is Ada?

11 A Ada is the name of our latest
12 generation of GPUs from Nvidia, the code name.

13 Q And what is RTX 4080?

14 A RTX is the -- the brand name or product
15 name of one of our higher performance GeForce
16 cards that we also use to brand this -- this new
17 level of performance on GeForce NOW.

18 Q And I'd like to show you a document
19 that's been premarked PX3141.

20 (PX Deposition Exhibit 3141 was
21 identified for the record and attached to the
22 transcript.)

23 BY MS. CALLAN:

24 Q I think if you refresh, you'll see it
25 there now.

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1 A I see the document. I just want to
2 scan it here.

3 (Witness reviews document.)

4 Okay. I've reviewed it.

5 Q Do you recognize this document?

6 A I do, yes.

7 Q What is it?

8 A It would have been the press release or
9 blog on the announcement of our new 4080 service.

10 Q Okay. And the second paragraph on
11 PX3141-001 says, Powered by the Nvidia Ada
12 Lovelace architecture, upgraded GeForce NOW
13 RTX 4080 SuperPODS will deliver over 64 teraflops
14 of graphics horsepower to an individual user,
15 which is more than five times that of an Xbox
16 Series X and nearly 1.7 times over the
17 previous-generation SuperPODS.

18 Do you see that?

19 A I do, yes.

20 Q And what is the Nvidia Ada Lovelace
21 architecture?

22 A That's what I was describing earlier as
23 our latest generation of GPU. [REDACTED]
24 [REDACTED]
25 this is the latest one.

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1 Q Is there a difference between Ada and
2 Ada Lovelace?

3 A We've taken -- our code names are named
4 after scientists, so the full name is Ada
5 Lovelace, but we generally shorten it to just call
6 it Ada.

7 Q And the new hardware GeForce NOW is
8 using has more than five times the graphics
9 horsepower of an Xbox Series X; is that correct?

10 A Measured by teraflops, that's correct.

11 Q And what are teraflops?

12 A It's -- it's a form of measuring
13 instructions computed per second. Floating-point
14 operations per second is the "flops" part, and
15 tera is, I think, more than a billion. It's a
16 lot.

17 Q And how do you know that the new
18 hardware GeForce NOW is using has more than five
19 point -- times the graphics horsepower of an Xbox
20 Series X?

21 A Generally, most computer systems
22 publish their teraflops level, and so Microsoft
23 has published the teraflops of an Xbox Series X.
24 And we also publish it ourselves; our architects
25 and scientists will compute these numbers. And,

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1 therefore, both are published public numbers, and
2 you can just do the division to figure out the
3 multiplier.

4 Q And the last sentence of the third
5 paragraph on PX3141-001 says, GeForce NOW achieves
6 click-to-pixel latency below 40 milliseconds.

7 Do you see that?

8 A I do, yes.

9 Q And what is click-to-pixel latency?

10 A That's the time from when you click the
11 mouse until you see the movement on the screen.

12 Q And how do you measure latency on
13 GeForce NOW?

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 Q And is milliseconds the metric you use
20 to measure latency?

21 A That's correct. It's measured in
22 milliseconds.

23 Q And does latency on GeForce NOW vary?

24 MR. BONANNO: Objection to form.

25 THE WITNESS: It can, yes. I mean, we

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1 have sort of three levels of service. So we have
2 the free, the priority, and the ultimate. So
3 depending on which level you select, it can
4 change.

5 There's also the round-trip delay to
6 the data center, so depending on how close you are
7 to the data center, it can change.

8 I think earlier we mentioned it can
9 vary based on your client decoding performance.
10 So there are a number of ways that latency can be
11 variable, yes.

12 BY MS. CALLAN:

13 Q So in the press release where GeForce
14 NOW announces below 40 milliseconds of
15 click-to-pixel latency, is that an average?

16 A No, that would be more of an optimized
17 case for the new ultimate series. That was
18 measured using the new ultimate series in
19 240-frame-per-second mode with, I think, being
20 relatively close to a data center.

21 Q Okay.

22 A So it's more on the optimistic side.

23 Q And why does proximity to a data center
24 matter?

25 A Because the way GeForce NOW works is

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1 the click input has to be sent to the data center
2 to be processed, and the image has to come back.
3 So depending on how far it is away, it affects the
4 milliseconds of latency.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
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1 [REDACTED]
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3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Q And is there a minimum latency that's
16 required in order to stream a game from the cloud?

17 A I mean, there's no hard rule about
18 that. It boils down to more the feel of the gamer
19 [verbatim] and the gamer, and some gamers in some
20 games are more sensitive to latency than others.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 Q How much above 100 milliseconds is
11 Xbox?

12 A I don't -- I don't have the numbers at
13 my fingertips right now, so I can't recall the
14 exact numbers.

15 Q Is there a minimum TFLOP performance
16 standard?

17 A There's no such thing that I'm aware
18 of. It just impacts, you know, your game -- your
19 frame rate and the visual effects that you can do
20 in the time allocated.

21 But there's no particular minimum.

22 Q How do TFLOPs impact gaming experience?

23 A If you have higher TFLOPs, you're
24 generally able to run the game at a higher frame
25 rate, which reduces latency, and you're also able

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1 to add more visual effects.
 2 So most games have settings where you
 3 can adjust the visual quality of the game. So if
 4 you have low TFLOPs, you would generally scale
 5 those down. If you have high TFLOPs, you can
 6 scale them up. And there's also a trade-off with
 7 your frame rate and latency.

8 So having more TFLOPs, performance is
 9 better because it gives you more quality and more
 10 frame rate and lower latency; and if you have
 11 lower TFLOPs, you have lower quality, lower frame
 12 rates and higher latency generally.

13 Q Does Nvidia have a TFLOP rate that you
 14 like to see?

15 A More is always better. You know, I
 16 mean, that's kind of what we do. I mean, each
 17 generation, we add more TFLOPs. So, you know,
 18 that's -- sort of part of the GeForce promise is
 19 that every couple of years, we add more TFLOPs.

20 And then we also have performance by
 21 price point, right. So more expensive services or
 22 GPUs have higher TFLOPs, and less expensive ones
 23 have lower TFLOPs. And then there's also aging of
 24 the generation.

25 So there's a pretty wide spectrum of

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1 TFLOPs that gamers game on, but at the same time,
 2 there's a wide spectrum of games and a wide
 3 spectrum of settings that they can adjust to
 4 accommodate for what they have in their system.

5 Q And when cloud gaming was first
 6 introduced, were there concerns about latency?

7 MR. BONANNO: Objection to form.

8 THE WITNESS: I would say that it's
 9 been a concern about cloud gaming since pretty
 10 much the beginning, yes.

11 BY MS. CALLAN:

12 Q And what feedback have you received
 13 related to latency on GeForce NOW?

14 A I mean, the early cloud gaming systems
 15 had quite high latency, probably in the
 16 200-millisecond range. So it was quite laggy, if
 17 you will, for gamers. So gamers were not -- were
 18 kind of turned off by that.

19 You know, Nvidia in particular has
 20 focused a lot on it because we're very gamer
 21 focused, and so we have reduced it now down below
 22 100 milliseconds and made it enjoyable for the
 23 majority of gamers.

24 Q You cut out briefly for me. I just
 25 want to make sure the court reporter was able to

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1 capture your answer.

2 THE COURT REPORTER: I heard him. I
 3 didn't get any garbled sound.

4 BY MS. CALLAN:

5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]

24 Q And have you received feedback from
 25 publishers on the work you've done to reduce

Page 49

1 latency?

2 A We get a little bit of feedback from
 3 publishers. I mean, they -- they test our games,
 4 and they -- they generally find that GeForce NOW
 5 is the best in terms of latency that they've
 6 tried.

7 Q So I'm going to turn to another topic.
 8 Do you want to take a break, or are you okay to
 9 keep going?

10 A I'm okay for now.

11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
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 8 [REDACTED]
 9 A That's variable as well depending on
 10 the machine type. As I mentioned, we have kind of
 11 three different levels. [REDACTED]
 12 [REDACTED]
 13 Q What are the three levels for GeForce
 14 NOW?
 15 A We have what we call our free level,
 16 which runs on a 2060B-type machine. We have the
 17 priority level, which runs on a 2080D-type
 18 machine. Then we have the ultimate level, which
 19 runs on a 4080H-type machine.
 20 [REDACTED]
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1 [REDACTED]
 2 BY MS. CALLAN:
 3 Q I would like to show you a document
 4 that has been premarked PX3144.
 5 (PX Deposition Exhibit 3144 was
 6 identified for the record and attached to the
 7 transcript.)
 8 MS. CALLAN: And for the record, PX3144
 9 is a presentation titled GFN Business Review -
 10 November 2022, and it's dated December 13th, 2022.
 11 BY MS. CALLAN:
 12 Q And this is a longer deck. I'm only
 13 going to ask you about the slide on PX3052-013.
 14 MR. BONANNO: Can you wait a beat,
 15 Ms. Callan? I do not have the exhibit in front of
 16 me.
 17 Mr. Eisler, do you?
 18 THE WITNESS: It's 3144? Is that the
 19 one you're talking about?
 20 BY MS. CALLAN:
 21 Q Correct.
 22 A I just received it.
 23 And you want me to look in particular
 24 at what slide?
 25 MR. BONANNO: Mr. Eisler, you should

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1 take as much time as you need to review the
2 document and familiarize yourself with it before
3 answering any questions.

4 BY MS. CALLAN:

5 Q So take your time with the document.
6 The only page that I have questions about ends in
7 013.

8 MR. BONANNO: Take as much time as you
9 need, Mr. Eisler.

10 THE WITNESS: (Reviews document.)

11 Okay. Sorry. I've scanned the general
12 document. Which slide in particular do you want
13 me to look at?

14 BY MS. CALLAN:

15 Q 013.

16 A So slide 13, okay. Okay.

17 Q Do you recognize this document?

18 A Yes, I do.

19 Q What is it?

20 A It's the profit and loss statement
21 calculated by finance for the cloud gaming
22 business.

23 Q Okay. And PX3144-013 shows GeForce
24 NOW's P&L for fiscal year '23; is that correct?

25 A That's correct.

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1 Q And what is JFF?

2 A That's called a -- it stands for judged
3 forward forecast, so that's, you know, a forecast
4 for the future period that hasn't occurred yet as
5 opposed to the actual, which is ACT.

6 It's a forecast, basically.

7 Q And when was Nvidia's fiscal year for
8 FY23?

9 A Our fiscal year starts one month
10 offset, so it starts on February 1st, and it's
11 always, like, a year ahead. So that's, like,
12 essentially 2022, except it's -- ends at the end
13 of January.

14 [REDACTED]
15 [REDACTED]
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19 [REDACTED]

20 A That's correct.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]?
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7 Q So what happens if more than 50,000
8 users try to play concurrently?
9 A So I mentioned we have, you know, the
10 three tiers of service. Two of them are paid and
11 one of them is free. And, so, our commitment to
12 the paid users is that they don't wait, so
13 generally they do -- they get priority and they
14 don't wait.
15 But we inform the free users that if we
16 are busy, they will have to wait. And, so,
17 essentially the free users begin to queue when
18 we're full.
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5 [REDACTED]
6 Q And GeForce NOW surveys its users about
7 the content users would like to see on GeForce
8 NOW; correct?
9 A Yes, we do.
10 Q And how do those surveys work?
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
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19 [REDACTED]
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21 [REDACTED]
22 [REDACTED]
23 Q And in those surveys, do you ask users
24 about what titles they would like to see on
25 GeForce NOW that are not currently on GeForce NOW?

Page 64

1 A We do, yes.
2 Q And is there a field where users can
3 type a response?
4 A In the -- in those surveys, yes.
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 MR. BONANNO: While we're waiting for
18 that document to load, let me ask, Mr. Eisler,
19 we've been going for a little while this leg.
20 Would you like to take a break now? I know also
21 the court reporter may want a break to rest her
22 fingers.
23 THE WITNESS: I'm okay. I'm more
24 concerned about the lengthy break I need for
25 lunch, but if the court reporter needs time,

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1 that's okay, too.
2 MS. CALLAN: We can finish with this
3 document and then take a break, if that works for
4 the group.
5 THE COURT REPORTER: Sounds good to me.
6 [REDACTED]
7 [REDACTED]
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 15 [REDACTED]
 16 [REDACTED]
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 20 [REDACTED]
 21 [REDACTED]
 22 MS. CALLAN: Okay. I think we can go
 23 off the record and take a break.
 24 THE WITNESS: Okay. Thanks.
 25 THE VIDEOGRAPHER: We are going off the

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1 record at 1704 UTC time.
 2 (Recess -- 10:04 a.m.)
 3 (After recess -- 10:15 a.m.)
 4 THE VIDEOGRAPHER: We are going back on
 5 the record at 1715 UTC time.
 6 BY MS. CALLAN:
 7 Q Mr. Eisler, GeForce NOW started off
 8 with a free beta version in 2017; is that correct?
 9 A Yes, that's correct.
 10 Q And did any publishers express any
 11 concerns about the user experience on GeForce NOW
 12 during the beta period?
 13 A You know, we -- we have interactions
 14 with a lot of different publishers, and so I'm not
 15 aware of all the conversations. But, in general,
 16 it wasn't -- it wasn't a big concern that I was
 17 aware of.
 18 Q Were there concerns that you were aware
 19 of?
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 69

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 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 Q Approximately how many publishers
 13 participated in the beta version of GeForce NOW?
 14 A I don't recall the exact number back
 15 then, but I think we had, you know, maybe around a
 16 dozen to start out with.
 17 Q Did more publishers join GeForce NOW
 18 during the beta period?
 19 A Yeah, we had kind of a continual
 20 increase in games. You know, depending on how far
 21 back you're going, like, we originally started out
 22 with a product called Grid which had only, I
 23 think, about 40 games, and then today we have over
 24 300 publishers. So they've kind of joined over
 25 time.

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1 Q And approximately how many users did
2 you have during the beta period?

3 A Now you're going way back in my memory.
4 If I recall, it was probably [REDACTED]
5 but I'm -- I'm having trouble remembering back
6 that far.

7 Q And Activision games were available in
8 GeForce NOW during the beta period; is that
9 correct?

10 A We had a number of their games on the
11 service during that time frame, yes.

12 Q And did Activision agree to make their
13 games available on GeForce NOW?

14 A We worked primarily through a contact
15 at Blizzard, which is part of Activision, and so
16 they were definitely supportive of our games being
17 there during the beta period.

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 71

1 [REDACTED]
2 Q And how long were Activision games
3 available on GeForce NOW during the beta period?

4 A Again, you're going way back in my
5 memory. I don't remember the exact period, but it
6 was -- and -- I think around six months or so, but
7 I'm trying to remember back in that time period.
8 Maybe longer.

9 Q And does GeForce NOW measure the
10 popularity of titles on its service?

11 A Always we do that, yes.

12 Q And how do you measure the popularity
13 of titles on GeForce NOW?

14 [REDACTED]
15 [REDACTED]

16 Q And were Call of Duty titles available
17 on GeForce NOW during the beta period?

18 A There were some titles on there, yes.

19 Q And when Call of Duty titles were on
20 GeForce NOW, were they popular?

21 A Call of Duty is always quite popular,
22 yes, so it was one of the more popular titles, if
23 I recall.

24 Q Did the popularity of Call of Duty vary
25 over time?

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1 A Call of Duty popularity does tend to go
2 up and down depending on where they are in their
3 release cycles and what events they have going on,
4 so its popularity does tend to go up and down.

5 Q And why do release cycles impact the
6 popularity of Call of Duty titles?

7 A Just building marketing awareness and
8 events, and so generally when new titles are
9 released, there's a lot of marketing associated
10 with it, which gets users' awareness up and then
11 they want to play it, and so they play it quite a
12 bit.

13 And then over time, the engagement
14 tends to wane somewhat until the next marketing
15 event or -- or change or update to titles.

16 Q And were some Call of Duty titles more
17 popular than others?

18 A Sure. You know, some of the newer,
19 more popular ones are typically used more than the
20 older ones; although, there are some favorites
21 that people tend to go back to and play.

22 Q What about the free-to-play Call of
23 Duty title? Was that available during the beta
24 period?

25 A Back then, they didn't have a

Page 73

1 free-to-play version. That came later. So we did
2 not have the free-to-play version on the service.

3 Q Would you expect the free-to-play Call
4 of Duty title to be popular on GeForce NOW?

5 A Definitely. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 [REDACTED]
17 [REDACTED]

18 Q And are there any other Call of Duty
19 titles that you would expect to be popular on
20 GeForce NOW?

21 A Your microphone is a little muffled.
22 Expect to be what?

23 Q Popular on GeForce NOW.

24 A You know, generally we like to be what
25 we call day and date with new releases. So as

Page 74

1 they release new titles, those are generally
2 popular, you know, the marketing events. The
3 free-to-play helps quite a bit, so that would be
4 more popular.

5 And then across Blizzard Activision
6 altogether, we find that the Overwatch series was
7 popular back then, and they now have a
8 free-to-play version of Overwatch. So I would
9 expect the new Overwatch 2 to be quite popular on
10 GeForce NOW as well.

11 Q And why is Overwatch popular on GeForce
12 NOW?

13 A I mean, it's a popular game in general,
14 and so generally, you know, popular games in the
15 PC gaming space are also popular on GeForce NOW.

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 So I would expect that both Call of
20 Duty Warzone, which is a free-to-play version, and
21 the new Overwatch 2, which is free to play, would
22 both probably be top ten titles on GeForce NOW if
23 they were available.

24 Q And you launched GeForce NOW
25 commercially in February of 2022; correct?

Page 75

1 A That's correct.

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
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9 [REDACTED]
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23 Q And when Activision removed its games
24 from GeForce NOW, how did GeForce NOW users react?

25 MR. BONANNO: Objection to form.

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1 Ms. Callan, I don't know whether
2 there's papers around your microphone or
3 something, but I'm personally having a hard time
4 making out your questions.

5 I don't know, Mr. Eisler, if you're
6 having the same problem.

7 THE WITNESS: It's also a little
8 muffled, yes.

9 THE VIDEOGRAPHER: Did counsel want to
10 go off the record for a moment to try to see if we
11 can solve this?

12 MS. CALLAN: I just pulled my computer
13 closer to me. Is this better?

14 THE WITNESS: Much better, yeah.

15 MS. BOHANON: Significantly.

16 MS. CALLAN: Okay. Great.

17 BY MS. CALLAN:

18 Q I'll ask the question again. When
19 Activision removed its games from GeForce NOW, how
20 did GeForce NOW users react?

21 MR. BONANNO: Objection to form.

22 THE WITNESS: They were -- they were --
23 they were upset by it. I mean, they -- they
24 expected the games to be continued, and they
25 were -- they were, I think, upset at both

Page 77

1 Activision and Nvidia for not finding a way to
2 keep the titles there.

3 BY MS. CALLAN:

4 Q You broke up again for me. I just want
5 to make sure the court reporter was able to hear
6 your answer.

7 It looks like she did. I'm just
8 looking at the realtime.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
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13 [REDACTED]
14 [REDACTED]
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Page 89

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9 [REDACTED]
10 Q I'd like to show you a document that
11 has been premarked PX2391.
12 (PX Deposition Exhibit 2391 was
13 identified for the record and attached to the
14 transcript.)
15 MS. CALLAN: And for the record, PX2391
16 is a January 2020 email and an attached
17 presentation from Phil Eisler to Brandon Zien and
18 Chris Schnakenberg of Activision with the subject
19 line: Nvidia GFN Update.
20 BY MS. CALLAN:
21 Q And you can take as long as you need to
22 review the document. I'm only going to ask you
23 about the cover email.
24 A (Witness reviews document.)
25 Okay. I'm ready.

Page 90

1 Q Do you recognize this document?
2 A I mean, it's a while ago now, but, yes,
3 I generally do, yes.
4 Q And what is it?
5 A Yeah, we -- we -- if you're talking
6 about the attached document, I mean, these are --
7 these are presentations that we create to try to
8 encourage publishers to support their games on
9 GeForce NOW with, you know, supporting data.
10 Q Okay. You wrote in your cover email to
11 Activision, As discussed, your games are still in
12 our Search Only category with generic artwork.
13 Do you see that?
14 A I do see that, yes.
15 Q What does that mean?
16 A We had -- I mean, if you go to the app
17 today, there -- all of the games are listed
18 there -- there's about 1,500 of them -- with
19 artwork and -- and brand-name titles. So you can
20 browse them. You can also search them from the
21 search box.
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 91

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12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 Q And Bethesda made its games available
22 on GeForce NOW during the beta period; correct?
23 A They were also on there, yes.
24 [REDACTED]
25 [REDACTED]

Page 94

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 MR. BONANNO: Objection to form.
 19 Mischaracterizes the witness' prior testimony.
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 95

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 BY MS. CALLAN:
 9 Q And when GeForce NOW transitioned to a
 10 commercial service, what happened?
 11 A They also asked us to remove titles and
 12 were interested in -- [REDACTED]
 13 [REDACTED]
 14 Q And did Bethesda allow GeForce NOW to
 15 keep any titles on its service?
 16 A They eventually allowed us to bring one
 17 or two back. I think Youngblood was one of them,
 18 and -- but they never brought back the whole
 19 catalog.
 20 Q Was Quake II the other title?
 21 A I'm sorry. What was the question?
 22 Q Was Quake II the other title that
 23 Bethesda allowed GeForce NOW to keep on its
 24 service after commercialization?
 25 A I believe that's correct.

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1 Q And after the commercial launch of
 2 GeForce NOW in February of 2020, Microsoft
 3 acquired Bethesda; correct?
 4 A Yes, Microsoft did acquire Bethesda.
 5 Q And what happened to the Bethesda
 6 titles that were on GeForce NOW at that time?
 7 A Microsoft asked us to remove them.
 8 Q And do you know who asked to remove the
 9 Bethesda titles that were still on GeForce NOW
 10 after Microsoft acquired Bethesda?
 11 A I don't recall who did. [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 Q Do you know if the request came from
 15 Microsoft?
 16 A I don't remember whether it came from
 17 Microsoft or Bethesda. Again, that would be
 18 something -- I mean, generally the -- the direct
 19 communication is through [REDACTED]
 20 [REDACTED].
 21 Q If we turn back to PX3104, I'd like to
 22 ask you about the slide ending in 021.
 23 For the record, this slide has an
 24 excerpt of a March 2021 email with the subject
 25 line, quote, Removal of Bethesda Games from Nvidia

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1 GFN.
 2 A Okay.
 3 Q Do you recognize this slide?
 4 A I do, yes.
 5 Q And what is it?
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 Q And this excerpt was included in your
 13 presentation to the CMA; correct?
 14 A This was part of that documentation
 15 set, yes.
 16 Q And what is your understanding of why
 17 this email was included in the presentation to the
 18 CMA?
 19 MR. BONANNO: Objection.
 20 Mr. Eisler, I just caution you not to
 21 reveal any of the substance of communications
 22 you've had with lawyers.
 23 THE WITNESS: I believe at the time the
 24 intent was to show that Microsoft was not that
 25 supportive of cloud gaming.

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1 BY MS. CALLAN:
 2 Q And in this email, [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 Do you see that?
 8 A I do see that, yes.
 9 Q So this email was sent after Microsoft
 10 acquired these titles from Bethesda; correct?
 11 A That's correct.
 12 Q And did Microsoft give a reason why
 13 they were taking these two titles down?
 14 A I don't recall. I mean, I -- you know,
 15 [REDACTED] that would have spoken
 16 directly with them about it.
 17 Q Did anyone communicate to you any
 18 reason that Microsoft was taking the titles down?
 19 A I recall that they just said, you know,
 20 not for now; that they just wanted them down. I
 21 don't think a reason was really given.
 22 Q Did anyone at Nvidia have any
 23 discussions with Microsoft about putting Bethesda
 24 titles back on GeForce NOW before the proposed
 25 transaction was announced in January of 2020?

Page 99

1 [REDACTED]
 2 [REDACTED],
 3 [REDACTED]
 4 [REDACTED]
 5 But I think he's -- their job is to
 6 continually try to get titles on there, so I would
 7 imagine that he did, but I am not certain of that.
 8 And Lauren works with Microsoft, so she would have
 9 been speaking to Microsoft.
 10 So I think -- [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 Q And Microsoft made its first-party
 14 games available on GeForce NOW for the beta
 15 period; is that correct?
 16 A We did have a few games. In
 17 particular, Minecraft was quite popular back then.
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 Q And when GeForce NOW transitioned to a
 23 commercial service, what happened with Microsoft
 24 first-party titles?
 25 A They also asked that they be removed,

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1 and we removed them.
 2 Q Did that include Minecraft?
 3 A That did include Minecraft.
 4 Q Do you know how long Minecraft was on
 5 GeForce NOW before it was taken down?
 6 A I don't remember the exact time frame,
 7 but it was, you know, I think six months to a
 8 year, during the beta period.
 9 Q And did Microsoft give a reason as to
 10 why they were taking their first-party titles
 11 down?
 12 A I don't recall the exact reasons
 13 stated, but it's usually something like, we're
 14 still evaluating our cloud gaming strategy, or
 15 something like that.
 16 Q And what did you understand that to
 17 mean that they're still evaluating their cloud
 18 gaming strategy?
 19 A I mean, I'm guessing what they mean by
 20 that, but it could mean lots of things. I mean, I
 21 think some of them want, you know, economic
 22 incentives. They want to figure out if they can
 23 make more money from it, or maybe they're building
 24 their own thing in-house.
 25 So it could mean lots of things, but

Page 101

1 it's hard to say.
 2 MS. CALLAN: I'm going to switch
 3 topics. Do you want to take a break, or do you
 4 want to keep going for 30 minutes until you take
 5 the longer break?
 6 THE WITNESS: Yeah, I'm okay to keep
 7 going until 11:30 my time.
 8 MR. BONANNO: Why don't -- before --
 9 before you ask your next question, Ms. Callan, I
 10 would like to know how long we've been on the
 11 record so far.
 12 MS. CALLAN: Why don't we go off the
 13 record for a minute and figure out logistics.
 14 MR. BONANNO: Okay.
 15 THE VIDEOGRAPHER: We are going off the
 16 record at 1803 UTC time.
 17 (Recess -- 11:03 a.m.)
 18 (After recess -- 11:05 a.m.)
 19 THE VIDEOGRAPHER: We are going back on
 20 the record at 1805 UTC time.
 21 BY MS. CALLAN:
 22 Q Mr. Eisler, Nvidia and Microsoft
 23 entered into a GeForce NOW listing agreement in
 24 February of 2023; is that correct?
 25 A That's correct.

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1 Q And the same day, you entered into a

2 [REDACTED] correct?

3 A That's correct.

4 [REDACTED]

5 [REDACTED]

6 [REDACTED].

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

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 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 Q I would like to show you another
 15 document. This one is premarked PX1781, and this
 16 document appears to be the GeForce NOW listing
 17 agreement that Nvidia entered into with Microsoft.
 18 (PX Deposition Exhibit 1781 was
 19 identified for the record and attached to the
 20 transcript.)
 21 BY MS. CALLAN:
 22 Q It should be in Box now.
 23 A I see it. I'm just reviewing it.
 24 (Witness reviews document.)
 25 Okay. I'm ready now.

Page 111

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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1 Q Okay. And this is the GeForce NOW
 2 listing agreement that Microsoft and Nvidia
 3 entered into in February of 2023; is that correct?
 4 A That's correct.
 5 Q And if you look at the last full
 6 paragraph on PX1781-001, this paragraph says,
 7 quote, [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 Do you --
 11 A Sorry. Which page are you on?
 12 Q The page ending 001.
 13 A 001. So the first page.
 14 Okay. I see. Okay. It's the end of
 15 the last full paragraph. Okay. I got it.
 16 Q Who proposed this language?
 17 [REDACTED]
 18 Q What was your understanding of the
 19 purpose of this language?
 20 MR. BONANNO: Objection.
 21 Mr. Eisler, before you answer the
 22 question, I caution you not to reveal any
 23 communications you had with counsel. Unless you
 24 have a separate understanding based on discussions
 25 you had directly with Microsoft, don't answer the

Page 114

1 question.

2 THE WITNESS: Yeah, [REDACTED]

3 [REDACTED]

4 BY MS. CALLAN:

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 Q Have you ever executed another
19 agreement that included this type of statement?

20 MR. BONANNO: Objection to form.

21 THE WITNESS: No. I mean, I -- I don't
22 think I've done a -- another agreement that
23 mentioned the word [REDACTED]
24 before.

25 BY MS. CALLAN:

Page 115

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Q Do you provide it to every publisher
15 that participates in GeForce NOW?

16 A It's available to all of them, yes.

17 Q How is it available?

18 A Well, there's a -- there's a portal
19 that we provide. I can't guarantee that they use
20 it, but we -- we make it available to them.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 116

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 So we established this portal, I think,
6 a couple of years ago. And we, you know, made all
7 of our -- we generally promote it to all of our
8 publishers, so it's a standard offering that we
9 have for all of our publishers.

10 MS. CALLAN: I'm going to pause here,
11 and I think we can go off the record.

12 THE VIDEOGRAPHER: Okay. We are going
13 off record at 1828 UTC time.

14 (Lunch recess -- 11:29 a.m.)

15 (After lunch recess -- 1:03 p.m.)

16 THE VIDEOGRAPHER: We are going back on
17 the record at 2003 UTC time.

18 BY MS. CALLAN:

19 Q Mr. Eisler, before the break, we were
20 looking at PX1781. If you can reopen that
21 document if you don't still have it in front of
22 you.

23 A I have it.

24 [REDACTED]

25 [REDACTED]

Page 117

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED].

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED].

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 118

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 Q My question was whether you've
 5 discussed it internally at Nvidia.
 6 MR. BONANNO: Objection. Privileged.
 7 Don't answer the question.
 8 MS. CALLAN: Mr. Bonanno, the fact of a
 9 discussion with a lawyer is not privileged.
 10 MR. BONANNO: You're asking about
 11 whether he had a discussion internally with Nvidia
 12 about this contract's interpretation; that
 13 necessarily is calling for the disclosure of legal
 14 advice.
 15 If you want to reformulate your
 16 question to exclude lawyers, you can do that and
 17 ask a clear question that would exclude the
 18 request for provision of legal advice.
 19 You have not done so.
 20 BY MS. CALLAN:
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 119

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 MR. BONANNO: Again, Mr. Eisler, I'm
 21 going to caution you not to reveal any
 22 communications or the substance of any
 23 communications that happened in the presence of
 24 Nvidia legal counsel.
 25 BY MS. CALLAN:

Page 120

1 [REDACTED]
 2 [REDACTED]
 3 MR. BONANNO: Again, Ms. Callan, I
 4 assume you are excluding conversations that
 5 involve legal counsel. It's not clear from your
 6 question.
 7 BY MS. CALLAN:
 8 Q Mr. Eisler, you can answer.
 9 MR. BONANNO: No, you can't. The
 10 question is not clear.
 11 Objection. Privilege.
 12 Don't answer the question.
 13 You can clarify the question to
 14 indicate you want to exclude legal advice, in
 15 which case, he could answer.
 16 BY MS. CALLAN:
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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1 Don't answer the question, Mr. Eisler.
 2 The witness just testified his only
 3 discussions have been about discussions to obtain
 4 legal advice with respect to this provision.
 5 BY MS. CALLAN:
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
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 25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 A I mean, in that case, Microsoft would
8 have the potential to opt out of Battle.net
9 support.
10 Q And this reference to Nvidia's prior
11 feedback, what was that?
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 Q And Microsoft agreed to make Game Pass
17 available on GeForce NOW under this agreement; is
18 that correct?
19 A Yes, they did.
20 Q Then the term is limited to [REDACTED]
21 [REDACTED] correct?
22 A I'm trying to remember the specific
23 term, but I guess on the next page, it is [REDACTED]
24 [REDACTED], that's correct.
25 [REDACTED]

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1 [REDACTED]
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Page 124

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4 A That's correct.
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 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 A I couldn't hear that, Nicole.
 10 Q Why is it a matter of debate?
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
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 25 [REDACTED]

Page 132

1 [REDACTED]
 2 Q I would like to show you another
 3 document. This one is premarked PX1784.
 4 (PX Deposition Exhibit 1784 was
 5 identified for the record and attached to the
 6 transcript.)
 7 BY MS. CALLAN:
 8 Q We're working on getting it uploaded.
 9 So while we're waiting, the GeForce NOW listing
 10 agreement and the [REDACTED] are separate
 11 documents; is that right?
 12 A That's correct.
 13 Q And why are they separate documents?
 14 MR. BONANNO: Objection to form. No
 15 foundation. Privileged.
 16 Mr. Eisler, to the extent you can
 17 answer the question based on information you did
 18 not receive from lawyers, you're free to do so.
 19 But if it involves the company's
 20 counsel, please don't respond to the question.
 21 THE WITNESS: I mean, they're kind of
 22 like apples and oranges. They're very different
 23 products and licenses. So it just made sense, I
 24 think, to keep them separate.
 25 BY MS. CALLAN:

Page 133

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 BY MS. CALLAN:
 8 Q Did Microsoft ask to -- scratch that.
 9 MS. CALLAN: Do you have the
 10 document -- okay.
 11 BY MS. CALLAN:
 12 Q If you could open PX1784.
 13 A I have it open now.
 14 Q Okay. Until recently, [REDACTED]
 15 [REDACTED]; is that
 16 right?
 17 A That's correct.
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 134

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 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED].
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED].
 20 [REDACTED]
 21 [REDACTED]
 22 BY MS. CALLAN:
 23 Q If you turn to paragraph 7 of PX1784 --
 24 And that's on the page ending in 001.
 25 -- in the middle of that paragraph it

Page 136

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
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 9 [REDACTED]
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 16 [REDACTED]
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 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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1 says, quote, [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 Do you see that?
 7 A Yeah, I see that.
 8 Q And I apologize, I should have asked,
 9 PX1784 is the [REDACTED]
 10 [REDACTED] is that correct?
 11 A That's correct.
 12 Q Okay. [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
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Page 137

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Page 138

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 11 [REDACTED]
 12 [REDACTED].
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 Q And how does Microsoft set the price of
 18 its Windows server license?
 19 A I don't know how they do it. I imagine
 20 they get in a room somewhere and they calculate
 21 it.
 22 Q Does Microsoft increase the price of
 23 the server license that you were paying?
 24 A Yeah. They have, under the standard
 25 agreement that we signed through the distributor,

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1 the ability to raise it once annually, which they
 2 typically do. [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 Q So Microsoft has been increasing the
 6 price of its Windows server license every year; is
 7 that correct?
 8 A Almost every year. I think there was
 9 maybe one year they didn't, but typically they do
 10 every year.
 11 Q And by approximately how much does
 12 Microsoft increase the price of its Windows server
 13 license for GeForce NOW each year?
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED].
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED],
 22 [REDACTED]
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Page 140

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 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 MS. CALLAN: Thank you, Mr. Eisler. I
 17 don't have any more questions at this time, but I
 18 will reserve the remaining time for redirect.
 19 MS. ARNOLD: Okay. Let's go off the
 20 record, then.
 21 Nicole, I think if we could figure out
 22 how much time you have for redirect, I think that
 23 would be helpful. If we could take a ten-minute
 24 break, and then I can start.
 25 MS. CALLAN: Okay.

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1 THE VIDEOGRAPHER: We are going off the
 2 record at 2046 UTC time.
 3 (Recess -- 1:47 p.m.)
 4 (After recess -- 2:00 p.m.)
 5 THE VIDEOGRAPHER: We are going back on
 6 the record at 2059 UTC time.
 7 EXAMINATION BY COUNSEL FOR MICROSOFT
 8 BY MS. ARNOLD:
 9 Q Good afternoon, Mr. Eisler. My name is
 10 Keri Arnold, and I represent Microsoft in this
 11 case, and I have some follow-up questions for you
 12 this afternoon, okay?
 13 A Okay.
 14 Q If at any point in time you'd like to
 15 take a break, will you please just let me know,
 16 and we'd be happy to accommodate you, all right?
 17 A Okay.
 18 Q I want to start by asking you about a
 19 document that's already been used in your
 20 deposition. It's been marked as PX1781, and if
 21 you could pull that up in your Box and let me know
 22 when you're ready.
 23 A I have it now.
 24 Q All right. And this is the GeForce NOW
 25 listing agreement that we've been talking about

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1 for a good part of your testimony this morning and
 2 afternoon; is that correct?
 3 A That's correct.
 4 Q All right. And this agreement was
 5 signed on February 20th, 2023; is that correct?
 6 A That's correct.
 7 Q By Mr. Fisher for Nvidia and Ms. Sarah
 8 Bond for Microsoft Corporation; is that correct?
 9 A That's correct.
 10 Q And does this agreement accurately
 11 reflect the terms that were agreed to by Nvidia
 12 and by Microsoft as a result of the negotiations
 13 that you've been testifying about today?
 14 A It reflects the game listing part.
 15 [REDACTED] but it
 16 reflects all of the game listing terms, yes.
 17 Q Okay. I want to ask you about a
 18 paragraph on the very first page of that document
 19 that you were actually asked about earlier today.
 20 It's the last full paragraph of that first page
 21 that starts, "Nvidia has responded."
 22 And let me know when you see that
 23 paragraph.
 24 A I see it.
 25 Q All right. And that states, [REDACTED]

Page 149

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 Did I read that correctly?
 9 A Yes, you did.
 10 Q And was that a true statement on
 11 February 20th, 2023, when the agreement was first
 12 signed?
 13 A Yes, that's true.
 14 Q And is that still true sitting here
 15 today in April of 2023?
 16 A Yes, that is still true.
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
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16 [REDACTED]
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Page 157

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24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]
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Page 160

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 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 BY MS. ARNOLD:
 11 Q Let me just reask the question,
 12 Mr. Eisler.
 13 You had a chance to review that
 14 transcript and make any corrections that were
 15 necessary; is that correct?
 16 MS. CALLAN: Objection. Leading.
 17 THE WITNESS: I did review the
 18 transcript, yes.
 19 BY MS. ARNOLD:
 20 Q All right. Would you please pull up
 21 RX0302.
 22 A Okay. I have it up now.
 23 Q And take a moment to look at it or as
 24 much time as you need. [REDACTED]
 25 [REDACTED]

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1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 MS. ARNOLD: All right. I'm going to
 7 ask for a new document to be pulled up, and we'll
 8 have it labeled RX0302.
 9 (RX Deposition Exhibit 0302 was
 10 identified for the record and attached to the
 11 transcript.)
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED];
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 161

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 Q All right. Thank you. You can put
 7 that one aside.
 8 I'm going to pull up the next document,
 9 which will be marked RX0298.
 10 (RX Deposition Exhibit 0298 was
 11 identified for the record and attached to the
 12 transcript.)
 13 BY MS. CALLAN:
 14 Q And let me know when you have that.
 15 A Okay. I'm just reading it now.
 16 (Witness reviews document.)
 17 Okay. I've -- I've reviewed it.
 18 Q Okay. And do you recognize or recall
 19 this email exchange?
 20 A I do, yes.
 21 [REDACTED]
 22 [REDACTED] from
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 162

1 [REDACTED].
 2 [REDACTED]
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 25 [REDACTED]

Page 163

1 [REDACTED]
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 8 [REDACTED]
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 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 BY MS. ARNOLD:
 15 Q All right. You can set that one aside.
 16 I want to ask you some general
 17 questions about GeForce NOW's content just sitting
 18 here today.
 19 Am I right that as of today, GeForce
 20 NOW has over 1,500 games available on the service?
 21 A That's correct.
 22 Q All right. And am I correct that you
 23 provide content, and those over 1,500 games come
 24 from hundreds of publishers, approximately 500?
 25 Does that sound about right?

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1 MS. CALLAN: Objection --
 2 THE WITNESS: That's about --
 3 MS. CALLAN: -- to form. Leading.
 4 THE WITNESS: That's about --
 5 MS. CALLAN: I'm sorry, sir. If you
 6 could just pause to give me a moment to put
 7 objections on the record, I'd appreciate that.
 8 THE WITNESS: Yes, that's correct.
 9 BY MS. ARNOLD:
 10 Q All right. And does that 500 include
 11 both smaller independent game publishers and
 12 larger major game publishers as well?
 13 MS. CALLAN: Objection. Form.
 14 THE WITNESS: Yes, it includes a
 15 mixture of smaller and larger publishers.
 16 BY MS. ARNOLD:
 17 Q Does GeForce NOW provide games created
 18 by a company called EA or Electric Arts?
 19 A Yes, we have some games from Electronic
 20 Arts.
 21 Q Okay. Ubisoft?
 22 A Yes, we have almost all the games from
 23 Ubisoft.
 24 Q All right. Epic Games?
 25 A Yes, we have Epic Games like Fortnite.

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1 Q All right. And Valve as well?
 2 A Yes, we have Valve games on there as
 3 well.
 4 Q Am I correct that GeForce NOW currently
 5 supports a number of third-party stores such as
 6 the Ubisoft store; is that correct?
 7 A Yes, we support multiple stores,
 8 including the Ubisoft stores, EA store, Valve
 9 store, Epic store and the GOG store.
 10 Q All right. And you also support
 11 subscription services, again, including the
 12 Ubisoft subscription service; is that right?
 13 A That's correct. Ubisoft Plus
 14 subscription service can be played on GeForce NOW.
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED].

Page 166

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 24 [REDACTED].
 25 [REDACTED]

Page 167

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED] survey
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 Q Now, we talked earlier -- or you spoke
 10 earlier about how during the beta phase GeForce
 11 NOW had access to certain ABK titles; is that
 12 correct?
 13 A During our free beta period, we had
 14 some of the ABK titles on GeForce NOW, that's
 15 correct.
 16 Q Okay. And one of those titles included
 17 Call of Duty; is that correct?
 18 A That we had --
 19 MS. CALLAN: Objection --
 20 THE WITNESS: Sorry, Nicole.
 21 MS. CALLAN: Objection. Form.
 22 Foundation.
 23 THE WITNESS: Yes, we had, I believe,
 24 several versions of Call of Duty on GeForce NOW at
 25 that time.

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1 [REDACTED].
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 Q All right. And was October of 2018
 9 when Call of Duty was first put on GeForce NOW's
 10 service during your beta phase?
 11 MS. CALLAN: Objection. Form.
 12 Foundation.
 13 THE WITNESS: Yeah, I believe that's
 14 the date that it was -- I don't recall the exact
 15 dates, but that sounds about right.
 16 BY MS. ARNOLD:
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
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 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 Q All right. If we could pull up -- hold
 22 on. I just lost my number. Okay. Pull up
 23 RX0279.
 24 (RX Deposition Exhibit 0279 was
 25 identified for the record and attached to the

Page 172

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 Q All right. And then if we could pull
 12 up RX0281.
 13 (RX Deposition Exhibit 0281 was
 14 identified for the record and attached to the
 15 transcript.)
 16 BY MS. CALLAN:
 17 Q And, again, just let me know after
 18 you've had a chance to look at it.
 19 A Okay.
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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1 transcript.)
 2 BY MS. ARNOLD:
 3 Q And let me know when you have that.
 4 MS. CALLAN: Counsel, I'm still not
 5 seeing RX0279 in Box.
 6 MS. ARNOLD: I think it just popped up.
 7 THE WITNESS: I just got it.
 8 BY MS. ARNOLD:
 9 Q Okay. Again, take a minute to look at
 10 that and let me know when you're ready.
 11 A (Witness reviews document.)
 12 Okay. I've reviewed it.
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED].
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 173

1 [REDACTED]
 2 BY MS. ARNOLD:
 3 Q Okay. Now, as of August of 2019, Call
 4 of Duty was still available on the beta phase of
 5 GeForce NOW; is that correct?
 6 MS. CALLAN: Objection. Leading.
 7 THE WITNESS: Yes, that's correct.
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED].
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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1 [REDACTED]
2 I wanted to ask you a few follow-up
3 questions about the period of time when GeForce
4 NOW was switching from its beta mode to the
5 commercial phase, okay?
6 A Sure.
7 Q And I think you testified earlier today
8 that the start of GeForce NOW's beta period was in
9 2017; is that correct?
10 A I don't remember the exact date
11 offhand, but I think that's about correct.
12 Q Okay. And you exited the beta phase in
13 February of 2020. Does that sound about right?
14 A That sounds about right.
15 Q Now, earlier today Ms. Callan asked you
16 about a number of companies who asked for their
17 games to be removed when GeForce NOW switched from
18 its beta phase to its commercial phase.
19 Do you recall those questions?
20 A I do.
21 MS. CALLAN: Objection to form.
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
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11 [REDACTED]
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13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 Q Okay. And I believe you said that
20 there were two titles that actually remained on
21 GeForce NOW as of February 2020; is that right?
22 A Yeah, I don't recall whether they
23 remained or they left and came back. My mind's a
24 little fuzzy on that. I think they might have
25 actually left and come back, but they were -- they

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1 did -- they did reappear.
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
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Page 180

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9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 BY MS. ARNOLD:
13 Q And do you recall whether Quake II RTX
14 also had a standard listing agreement or not at
15 the time?
16 A I don't recall whether that had a
17 standard listing agreement or whether it was a
18 verbal agreement with our DevRel team. I don't
19 recall.
20 Q All right. I want to go forward in
21 time now to the point in time when Microsoft
22 acquired ZeniMax, which was in March of 2021.
23 Does that sound about right to you?
24 A Yes, that sounds about right.
25 [REDACTED]

Page 181

1 [REDACTED]
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3 [REDACTED]
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Page 186

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 MS. ARNOLD: Mr. Eisler, I think I'm
 9 about done, but what I would like to do is take a
 10 ten-minute break, and then we can go back on the
 11 record, and I'll ask any remaining questions I
 12 might have.
 13 THE WITNESS: Okay. I'll be back at
 14 three o'clock my time. Thanks.
 15 THE VIDEOGRAPHER: Very well. We are
 16 going off the record at 2147 UTC time.
 17 (Recess -- 2:47 p.m.)
 18 (After recess -- 3:00 p.m.)
 19 THE VIDEOGRAPHER: We are going back on
 20 the record at 2200 UTC time.
 21 BY MS. ARNOLD:
 22 Q All right. Mr. Eisler, I just have a
 23 few final questions for you this afternoon.
 24 [REDACTED]
 25 [REDACTED]

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1 [REDACTED]
 2 [REDACTED]
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Page 188

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 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 BY MS. ARNOLD:
 20 Q Okay. Would you pull up for me a
 21 document that's been previously marked as PX3157.
 22 A Okay. I have it now.
 23 Q All right. And you were asked about
 24 this earlier. Just take a moment to refresh your
 25 recollection about this one, and let me know when

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1 you're ready.
 2 A (Witness reviews document.)
 3 Yes, I have it now.
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
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 12 [REDACTED]
 13 [REDACTED]
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 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 Q All right. Thank you. You can set
 15 that document aside.
 16 Throughout your testimony today, you've
 17 referenced testimony that you've given to various
 18 regulators, including the European commission and
 19 the CMA.
 20 Has the testimony that you've provided
 21 to those regulatory bodies been true and accurate
 22 to the best of your knowledge at the time that you
 23 gave that testimony?
 24 A Yes, it has been.
 25 Q Okay.

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1 MS. ARNOLD: Mr. Eisler, I don't have
 2 any further questions for you right now. I very
 3 much appreciate your time and patience this
 4 afternoon.
 5 THE WITNESS: Thank you.
 6 MS. CALLAN: I have a few more
 7 questions for you. Let's take a five-minute
 8 break, and then I can promise I won't have more
 9 than 12 minutes of questions for you, and then we
 10 can wrap up.
 11 THE WITNESS: Okay. Thanks.
 12 THE VIDEOGRAPHER: We are going off the
 13 record at 2206 UTC time.
 14 (Recess -- 3:06 p.m.)
 15 (After recess -- 3:15 p.m.)
 16 THE VIDEOGRAPHER: We are going back on
 17 the record at 2215 UTC time.
 18 EXAMINATION BY COUNSEL
 19 FOR THE FEDERAL TRADE COMMISSION
 20 BY MS. CALLAN:
 21 Q Mr. Eisler, can you pull up RX0278,
 22 please.
 23 And for the record, this is a document
 24 that Ms. Arnold showed you earlier today with the
 25 title GeForce NOW KPIs, and it's dated

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1 October 2018.
 2 A Okay. I have it now.
 3 Q This document was created during the
 4 beta phase for GeForce NOW; correct?
 5 A That's correct.
 6 Q And was GeForce NOW free at this time?
 7 A It was free during our beta period,
 8 yes.
 9 Q Do you know approximately how many
 10 users GeForce NOW had in the fall of 2018?
 11 A I think this document may actually have
 12 that answer somewhere.
 13 (Witness reviews document.)
 14 I think it was around [REDACTED] if I
 15 recall. It's showing the registered users there.
 16 And this is in when? This is October. So it's
 17 showing we registered actually about [REDACTED] users
 18 at that point.
 19 Q Do you know approximately how many of
 20 the registered users were active on the service at
 21 this time?
 22 A Yeah. So if you go down to slide 4, it
 23 says that on October, the monthly active users
 24 were [REDACTED] to be exact.
 25 Q Okay. And what was Nvidia's strategy

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1 for GeForce NOW in the fall of 2018?

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED].

8 Q And if you turn to the slide that ends
9 in 005, does this show that [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 A Let me just look at this in detail.
13 The slide isn't the best quality here, but . . .
14 (Witness reviews document.)

15 The frequent users are -- you know,
16 it's hard to estimate the percentage there, but it
17 looks like about [REDACTED] of -- of the play
18 hours. I don't think it actually says how many of
19 the frequent users there are on this slide, so
20 it's a little hard to deduce how many there are
21 from this slide.

22 But this is just saying that the
23 frequent users play about [REDACTED] of the time
24 on the service, and that their average hours
25 played each is in the -- you know, close to [REDACTED]

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1 hours a month. It doesn't really say how many of
2 them there are. Maybe the previous chart does.

3 Yeah, the previous chart says that the
4 frequent users are [REDACTED] so that's [REDACTED],
5 roughly. So [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 A Yeah, that's approximate by looking at
11 those graphs, yes.

12 Q Okay. I asked you about Nvidia's
13 strategy for GeForce NOW in the fall of 2018.

14 Were there any particular categories of
15 gamers that you were targeting at that time?

16 [REDACTED]
17 [REDACTED]
18 [REDACTED];
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 Q And Ms. Arnold asked you about
3 RX0278-010 [sic]. Could you turn to that page?

4 A I have it up now.

5 Q You're faster than me.

6 At the bottom it says, quote, [REDACTED]
7 [REDACTED]

8 Do you see that?

9 A I do see that, yes.

10 [REDACTED]
11 A You know, Activision has many versions
12 of Call of Duty. They tend to release one every
13 year or two, and so they have maybe a dozen
14 different versions. Black Ops 4 is -- is one that
15 was popular back then.

16 Q And how did GeForce NOW decide which
17 versions of Call of Duty to put on GeForce NOW?

18 A We generally strive to put the most
19 popular versions on, but we also consult with the
20 publishers about which versions to put on.

21 Q And did users need to purchase Black
22 Ops 4 in order to play it on GeForce NOW?

23 A They either needed to purchase it or
24 already own it. So the way that GeForce NOW is,
25 we can -- we can verify your ownership against the

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1 store platform.

2 So I believe in this case, it was
3 supported on Battle.net, and so you could log into
4 Battle.net. And if you already owned it, you
5 could play it; but if you don't own it, you could
6 buy it and then play it.

7 Q And if you already owned it, that would
8 also be because you purchased it; correct?

9 A You would have purchased it previously,
10 yes.

11 Q And do you know the price point for
12 Call of Duty: Black Ops 4 at this time?

13 A I don't recall at that time, but
14 normally the launch price for new games is about
15 \$60, and then it tends to decline over time. So I
16 think this game was relatively new at that point,
17 so it may have been a \$60 game.

18 Q And according to the chart on
19 RX0278-0010, the most popular title at this time
20 on GeForce NOW was Fortnite; is that correct?

21 A That's correct.

22 Q Do users need to purchase Fortnite in
23 order to play it on GeForce NOW?

24 A No. Fortnite is a free-to-play game.

25 Q And did Nvidia do any marketing when

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1 Call of Duty: Black Ops 4 became available on
2 GeForce NOW?

3 A I don't recall back then. We generally
4 do weekly marketing beats when new titles come to
5 the surface, so we may have back then, but I don't
6 recall.

7 Q We talked earlier today about
8 Activision titles being search only. Do you
9 recall if Call of Duty: Black Ops 4 was search
10 only at this time?

11 A My memory was, you know, initially they
12 were fully supported with game assets, and then we
13 transitioned to the search-only state for a period
14 of time.

15 I don't remember the specific
16 transitions from when it went, you know, fully
17 available with assets to -- to search only. I
18 think it was a little bit after this if my memory
19 serves me correctly.

20 Q And who would know the answer?

21 A I would probably have to talk to my
22 team about it, but there's a person on my team
23 responsible for game onboarding, and he would
24 probably have to search back through his records
25 to find out, but we probably could find out if

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1 that's important.

2 Q Okay. And where would he search?

3 MR. BONANNO: Objection to form. No
4 foundation.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 MS. CALLAN: All right. I have no
15 further questions at this time for you,
16 Mr. Eisler.

17 Mr. Bonanno, I did have one question
18 for you. Mr. Eisler testified earlier today about
19 a GeForce NOW business review that was analyzing
20 profitability in light of the Nvidia-Microsoft
21 agreement that he was going to present today if he
22 wasn't here with us today.

23 I'd like to ask that you produce that
24 document as soon as possible and, in any event,
25 before our next deposition in this matter.

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1 MR. BONANNO: So I guess a couple of
2 things. One, we're going to talk about that next
3 deposition given how today went because I think
4 this was, for the record, a tremendous waste of
5 time for Mr. Eisler given how you've used your
6 time in the deposition today.

7 Number two, I think you're
8 mischaracterizing what Mr. Eisler said about
9 whether the document you are requesting exists.
10 The meeting was cancelled for today. I'll follow
11 up and have discussions with my client after today
12 and get back to you on your request.

13 I would ask that you make it through
14 the appropriate channels, not at the end of the
15 deposition, and we'll follow up accordingly.

16 Three, just before we close the record,
17 I want to reiterate that today's deposition,
18 Nvidia will be marking as highly confidential or
19 confidential under the applicable protective
20 order.

21 There was highly sensitive Nvidia
22 business secrets that were discussed throughout
23 Mr. Eisler's testimony, and they should be treated
24 accordingly under all applicable statutes and
25 regulations.

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1 MS. CALLAN: Okay. I think we're done
2 here. Mr. Eisler, thank you for your time.

3 THE VIDEOGRAPHER: Very well. Before
4 we complete for the day, we ask that any party
5 wishing to order a copy of the video in either MP4
6 or video sync please do so now along with your
7 transcript order.

8 If you are unable to decide at this
9 time and wish to be contacted, please state that
10 on the record along with your preferred contact's
11 information.

12 MS. CALLAN: Yeah, we're not going to
13 make a decision at this time, so you can contact
14 me on behalf of the FTC.

15 THE VIDEOGRAPHER: Okay. If -- I would
16 please ask just put the emails in the chat, and I
17 can put them in my notes and pass them along.

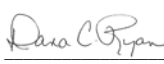
18 MS. ARNOLD: And my understanding is we
19 have a standard order, and we'd ask just that you
20 follow that for this deposition.

21 THE VIDEOGRAPHER: Yes, ma'am.

22 MS. ARNOLD: Thank you.

23 MR. BONANNO: Phil, you can go ahead
24 and go. You're done for the day. Thank you very
25 much.

April 12, 2023

<p style="text-align: right;">Page 202</p> <p>1 THE VIDEOGRAPHER: This concludes</p> <p>2 today's testimony of Mr. Phil Eisler. We are now</p> <p>3 going off the record at 2228 UTC time.</p> <p>4</p> <p>5</p> <p>6 (Signature having not been waived, the</p> <p>7 Remote Videotaped Deposition of PHILLIP EISLER</p> <p>8 ended at 3:28 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 204</p> <p>1 INSTRUCTIONS TO WITNESS</p> <p>2</p> <p>3 Please read your deposition over</p> <p>4 carefully and make any necessary corrections. You</p> <p>5 should state the reason in the appropriate space</p> <p>6 on the errata sheet for any corrections that are</p> <p>7 made.</p> <p>8 After doing so, please sign the errata</p> <p>9 sheet and date it.</p> <p>10 You are signing same subject to the</p> <p>11 changes you have noted on the errata sheet which</p> <p>12 will be attached to your deposition.</p> <p>13 It is imperative that you return the</p> <p>14 original errata sheet to the deposing attorney</p> <p>15 within thirty (30) days of receipt of the</p> <p>16 deposition transcript by you. If you fail to do</p> <p>17 so, the deposition transcript may be deemed to be</p> <p>18 accurate and may be used in court.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																																																															
<p style="text-align: right;">Page 203</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC</p> <p>2 I, Dana C. Ryan, Registered Professional</p> <p>3 Reporter, Certified Realtime Reporter, the officer</p> <p>4 before whom the foregoing proceedings were taken</p> <p>5 do hereby certify that the foregoing transcript is</p> <p>6 a true and correct record to the best of my</p> <p>7 ability of the proceedings; that said proceedings</p> <p>8 were taken by me stenographically and thereafter</p> <p>9 reduced to typewriting under my supervision; and</p> <p>10 that I am neither counsel for, related to, nor</p> <p>11 employed by any of the parties to this case and</p> <p>12 have no interest, financial or otherwise, in its</p> <p>13 outcome.</p> <p>14 IN WITNESS WHEREOF, I have hereunto set</p> <p>15 my hand and affixed my notarial seal this 13th day</p> <p>16 of April 2023.</p> <p>17 My Commission expires:</p> <p>18 November 23, 2024</p> <p>19</p> <p>20</p> <p>21 </p> <p>22</p> <p>23 NOTARY PUBLIC IN AND FOR THE</p> <p>24 STATE OF ALABAMA</p> <p>25</p>	<p style="text-align: right;">Page 205</p> <p>1 E R R A T A S H E E T</p> <p>2 IN RE: MICROSOFT CORPORATION, a corporation and</p> <p>3 ACTIVISION BLIZZARD, INC., a corporation</p> <p>4 RETURN BY: _____</p> <table border="1"> <thead> <tr> <th>5 PAGE</th> <th>6 LINE</th> <th>CORRECTION AND REASON</th> </tr> </thead> <tbody> <tr><td>6</td><td>_____</td><td>_____</td></tr> <tr><td>7</td><td>_____</td><td>_____</td></tr> <tr><td>8</td><td>_____</td><td>_____</td></tr> <tr><td>9</td><td>_____</td><td>_____</td></tr> <tr><td>10</td><td>_____</td><td>_____</td></tr> <tr><td>11</td><td>_____</td><td>_____</td></tr> <tr><td>12</td><td>_____</td><td>_____</td></tr> <tr><td>13</td><td>_____</td><td>_____</td></tr> <tr><td>14</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>_____</td><td>_____</td></tr> <tr><td>21</td><td>_____</td><td>_____</td></tr> <tr><td>22</td><td>_____</td><td>_____</td></tr> <tr><td>23</td><td>_____</td><td>_____</td></tr> <tr><td>24</td><td>_____</td><td>_____</td></tr> <tr> <td>25</td> <td>(DATE)</td> <td>(SIGNATURE)</td> </tr> </tbody> </table>	5 PAGE	6 LINE	CORRECTION AND REASON	6	_____	_____	7	_____	_____	8	_____	_____	9	_____	_____	10	_____	_____	11	_____	_____	12	_____	_____	13	_____	_____	14	_____	_____	15	_____	_____	16	_____	_____	17	_____	_____	18	_____	_____	19	_____	_____	20	_____	_____	21	_____	_____	22	_____	_____	23	_____	_____	24	_____	_____	25	(DATE)	(SIGNATURE)
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1 ACKNOWLEDGMENT OF DEPONENT
2 I, Phillip Eisler, do hereby
3 acknowledge that I have read and examined the
4 foregoing testimony, and the same is a true,
5 correct and complete transcription of the
6 testimony given by me and any corrections appear
7 on the attached Errata sheet signed by me.

8
9

10

11 _____
12 (DATE) (SIGNATURE)

13
14

15 CERTIFICATE OF NOTARY PUBLIC

16 Sworn and subscribed to before me this

17 _____ day of _____, _____

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21 NOTARY PUBLIC MY COMMISSION EXPIRES

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